

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/DTS)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

JEFFREY SULLIVAN,

Civil Action No.: 18-cv-02065

Plaintiff,

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Jeffrey Sullivan, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1828], and by and through undersigned counsel submits this, her Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

FACTS AND ARGUMENT

Mr. Sullivan contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicate that a Bair Hugger device was used during the original surgery. On July 20, 2018, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

Efforts to have Plaintiff complete the Plaintiff Fact Sheet (“PFS”) began soon after the case was filed but have been complicated by Plaintiff not returning the PFS to Counsel. Plaintiff has informed Counsel that he is disabled and has not been able to get to the post office. Counsel has been in close contact with Plaintiff over the last several weeks in an effort to obtain his PFS. Plaintiff informed Counsel that he recently experienced a fall and has suffered injuries that have prevented him from completing and returning the PFS. Plaintiff has assured Counsel that he will FedEx the PFS within the next week.¹

While counsel has diligently continued their attempts to obtain the PFS, those efforts have not been successful to date. As a result, counsel has not been able to obtain the necessary information to complete the PFS for this claim. Counsel for Plaintiff believes that additional time will allow Plaintiff to complete and return the PFS.

CONCLUSION

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Plaintiff be given an additional sixty (60) days so that Mr. Sullivan be given the opportunity to provide the necessary information to complete the PFS and to continue the case.

¹ See Exhibit A, Email Correspondence from Plaintiff to Counsel.

Dated: March 12, 2019

KENNEDY HODGES, LLP

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